



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Notice

**PN 04-76**  
**April 30, 2013**

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## **NFS 1815.404-2 – DATA TO SUPPORT PROPOSAL ANALYSIS**

**PURPOSE:** The purpose of this PN is to revise the NASA FAR Supplement (NFS) 1815.404-2 relative to the procedures for requesting field pricing support from the Defense Contract Audit Agency (DCAA) or the Defense Contract Management Agency (DCMA).

**BACKGROUND:** Oversight organizations have recommended that DCAA assess the use of their resources to ensure that audit efforts are focused on the areas with the greatest risk to the taxpayer. DCAA has performed these assessments and revised their policies accordingly. These revised policies, along with ever-tightening budgets and the call to reduce NASA transaction costs, necessitated a need to make changes to the field pricing support request process contained in the NFS.

**ACQUISITIONS AFFECTED BY CHANGES:** These changes are applicable to acquisitions where a cost proposal is received on or after the effective date of this PN.

**ACTIONS REQUIRED BY CONTRACTING OFFICERS:** Ensure that new field pricing support requests follow the revised guidance set forth in this PN.

**CLAUSE CHANGES:** None.

**PARTS AFFECTED:** Part 1815.

**EFFECTIVE DATE:** This PN is effective as dated and will automatically be cancelled when incorporated into the NFS.

**REPLACEMENT PAGES:** Replacement pages will no longer be distributed. NFS changes will be posted to the official on-line version.

**TYPE OF RULE AND PUBLICATION DATE:** This change does not have a significant impact beyond the internal operating procedures of NASA and does not have a significant cost or administrative impact on contractors or offerors, and therefore does not require codification in the Code of Federal Regulations (CFR) or publication for public comment.

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**PART 1815**  
**CONTRACTING BY NEGOTIATION**

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(j) A source selection statement shall be prepared in accordance with 1815.308. For installation selections, the installation Chief Counsel or designee will prepare the source selection statement. For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

(k) **SEB Records.**

(1) This specifies the source selection documentation the Contracting Officer shall retain in the official contract file in accordance with FAR 4.803(a)(13), Contents of contract files. Specifically, upon completion of SEB activities, the Contracting Officer shall retain a copy of the following source selection evaluation documents in the official contract file for initial proposals and final proposal revisions (FPR), if applicable:

- (i) Each offeror's proposal;
- (ii) The competitive range determination(s);
- (iii) The unsuccessful and successful notices sent to offerors;
- (iv) If committees were utilized, the committee's evaluation for each evaluation factor, including all identified significant strengths, strengths, significant weakness, weaknesses, and deficiencies, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB;
- (v) Documentation of any clarifications and discussions held with offerors during the source selection process;
- (vi) Initial and final reports containing the SEB's consensus findings, including minority reports, if any;
- (vii) All presentations from the SEB to the SSA, including those containing the SEB's evaluation and rating of proposals; and
- (viii) The source selection decision;

(2) Extra copies of offerors' proposals should be stored in a secure facility and shall be properly disposed of after the time period for filing a protest has expired.

(3) Contracting officers shall handle electronic copies of materials containing source selection information in the same manner as the hardcopy information.

## **Subpart 1815.4--Contract Pricing**

### **1815.403 Obtaining cost or pricing data.**

#### **1815.403-1 Prohibition on obtaining cost or pricing data.**

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception.

(c)(4) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with [FAR 1.704](#). A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HK).

#### **1815.403-170 Waivers of cost or pricing data.**

(a) NASA has waived the requirement for the submission of cost or pricing data when contracting with the Canadian Commercial Corporation (CCC). This waiver applies to the CCC and its subcontractors. The CCC will provide assurance of the fairness and reasonableness of the proposed price. This assurance should be relied on; however, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to support any required proposal analysis, including a technical analysis and a cost realism analysis. The CCC also will provide for follow-up audit activity to ensure that any excess profits are found and refunded to NASA.

(b) NASA has waived the requirement for the submission of cost or pricing data when contracting for Small Business Innovation Research (SBIR) program Phase II contracts. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to determine price reasonableness and cost realism.

#### **1815.403-3 Requiring information other than cost or pricing data.**

(b) As indicated in 1815.403-1(b)(1), the adequate price competition exception applies to all competitive acquisitions. For other than firm-fixed-price competitions, only the minimum information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested. For firm-fixed-price competitions, the contracting officer shall not request any cost information, except as required by FAR 22.1103, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

#### **1815.403-4 Requiring cost or pricing data.**

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of that agreement.

#### **1815.404 Proposal analysis.**

##### **1815.404-1 Proposal analysis techniques.**

(e)(2)(A) The NASA Technical Evaluation Report Template and Guide provide agency-wide guidance to individuals performing a technical analysis on a contractor's proposal and are available on the NASA Headquarters Procurement Library. The NASA Technical Evaluation Report Template shall be used to document the results of all sole source contractor proposal technical evaluations. The Director of the Headquarters Office of Procurement Contract Management Division is the approval authority to utilize a template (such as a Center derived technical evaluation web-based system) other than the NASA Technical Evaluation Report Template.

##### **1815.404-2 Data to support proposal analysis.**

(a)(1)(A) When the required participation of the ACO involves merely a verification of information, contracting officers should obtain this verification from the cognizant **DCMA** office.

**(B)** When the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMA ACO or DCAA.

**(C)** Before requesting field pricing support, contracting officers should determine what information can be obtained from NASA resources, so as to be able to tailor field pricing support requests to the minimum amount of information truly needed to conduct the cost/price analysis.

**(D)** Requests for **DCAA audit** assistance shall be made on NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services. **DCAA audit requests shall be made in accordance with the following:**

**(1)** Audit requests shall only be made after the CO performs an analysis and concludes that other resources (DCMA, internal analysis, etc...) will not provide the information necessary to determine that the cost is reasonable and realistic.

(2) Audit requests should not be requested for proposed contracts or modifications in an amount less than \$10M for Fixed-Price proposals and \$100M for Cost-Type proposals unless there are exceptional circumstances which are explained in the audit request.

(3) Audit requests shall not be requested for proposal rate and factor analysis/verification. All such requests should be made through the cognizant DCMA ACO.

(4) Audit requests must be approved and submitted to DCAA only by Center Cost/Price Analysts. Center Cost/Price Analysts shall coordinate all such requests with Headquarters Office of Procurement Contract Management Division.

(5) Center Cost/Price Analysts will work with the DCAA HQ Financial Liaison Advisor (FLA) at email [DCAA-FLA-NONDOD@dcaa.mil](mailto:DCAA-FLA-NONDOD@dcaa.mil) to arrange contact with field audit offices and facilitate the audit request. Contact Headquarters Office of Procurement Contract Management Division for name and phone number of current DCAA HQ FLA.

(E) Field pricing support requests from DCMA shall be made in accordance with the following.

(1) DCMA field pricing audit requests shall only be made after the CO performs an analysis and concludes that other resources (e.g. internal analysis) will not provide the information necessary to determine that the cost is reasonable and realistic.

(2) Proposal rate and factor analysis/verification and business system status requests shall be requested only by Center Cost/Price Analysts. Center Cost/Price Analysts should first check DCMA's Consolidated Business Analysis Repository (CBAR) for this information. If information is not in CBAR, request for this information should be to the cognizant DCMA ACO for your particular procurement. If cognizant DCMA ACO is unknown, contact the DCMA NASA Support Desk operated by DCMA NASA Product Operations at email [NASA\\_Support\\_Desk@dcma.mil](mailto:NASA_Support_Desk@dcma.mil) or phone 210-295-0121 to obtain contact information for cognizant DCMA ACO.

(3) DCMA pricing support should be requested through the cognizant DCMA ACO for your particular procurement. If cognizant DCMA ACO is unknown, contact the DCMA NASA Support Desk operated by DCMA NASA Product Operations at email [NASA\\_Support\\_Desk@dcma.mil](mailto:NASA_Support_Desk@dcma.mil) or phone 210-295-0121 to obtain contact information for cognizant DCMA ACO.

(F) Use of Contractor to Perform Contract Audit Services:

(1) At contractor locations where DCAA currently conducts any contract audit services, the use of a Contractor to Perform Contract Audit Services is not allowed. In these situations, the contracting officer should elevate any issues with untimely audit services to the Field Audit Office (FAO) manager and/or Regional Audit Manager (RAM). If additional assistance is needed to obtain timely DCAA services, contracting officers may request such assistance from the Headquarters Office of Procurement Contract Management Division.

(2) When DCAA does not currently perform contract audit services for a particular contractor, the contracting officer may utilize a Contractor to Perform Contract Audit Services:

(i) For proposal, financial capability, and accounting system reviews, interim and final contract billings, contract audit closing statements, requests for equitable adjustments, contract terminations, defective pricing reviews, compliance with Cost Accounting Standards (CAS), earned value management (EVM) systems, and estimating systems reviews.

(ii) For incurred cost audit services, purchasing systems, and other internal controls within the contractor's operational environment, if the portion of the current contractor fiscal year (CCFY) work performed for NASA is more than 50 percent of their business base.

**1815.404-4 Profit.**



(b)(1) (i)(a) The NASA structured approach for determining profit or fee objectives, described in 1815.404-471 shall be used to determine profit or fee objectives in the negotiation of contracts greater than or equal to \$100,000 that use cost analysis and are:

(1) Awarded on the basis of other than full and open competition (see [FAR 6.3](#));

(2) Awarded under NASA Research Announcements (NRAs) and Announcements of Opportunity (AO's); or

(3) Awarded under the Small Business Innovative Research (SBIR) or the Small Business Technology Transfer Research (STTR) programs.

(b) The rate calculated for the basic contract may only be used on actions under a negotiated contract when the conditions affecting profit or fee do not change.

(c) Although specific agreement on the applied weights or values for individual profit or fee factors shall not be attempted, the contracting officer may encourage the contractor to –

(1) Present the details of its proposed profit amounts in the structured approach format or similar structured approach; and

(2) Use the structured approach method in developing profit or fee objectives for negotiated subcontracts.

(ii) The use of the NASA structured approach for profit or fee is not required for:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of materials supplied by subcontractors;

(e) Termination settlements; and

(f) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

(c)(2) Contracting officers shall document the profit or fee analysis in the contract file.

#### **1815.404-470 [NASA Form 634](#).**

NASA Form (NF) 634 shall be used in performing the analysis necessary to develop profit or fee objectives.

#### **1815.404-471 NASA structured approach for profit or fee objective.**

##### **1815.404-471-1 General.**

(a) The structured approach for determining profit or fee objectives (NF 634) focuses on three profit factors:

(1) Performance risk;

(2) Contract type risk including working capital adjustment; and

(3) Other Considerations which may be considered by the contracting officer to account for special circumstances that are not adequately addressed in the performance risk and contract type risk factors.

(b) The contracting officer assigns values to each profit or fee factor; the value multiplied by the base results in the profit/fee objective for that factor. Each factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by NASA. The designated range provides values based on above normal or below normal conditions. Values outside the designated range must not be used. In the negotiation documentation, the contracting officer need not explain assignment of the normal value, but must address conditions that justify assignment of other than the normal value.

##### **1815.404-471-2 Performance risk.**



(a) *Risk Factors*. Performance risk addresses the contractor's degree of risk in fulfilling the contract requirements. It consists of three risk factors:

- (1) Technical – the technical uncertainties of performance;
- (2) Management – the degree of management effort necessary to ensure that contract requirements are met; and
- (3) Cost control – the contractor's efforts to reduce and control costs.

(b) *Risk factor weighting, values and calculations*. A weighting and value is assigned to each of the risk factors to determine a profit/fee objective.

(c) *Values*. The normal value is 6 percent and the designated range is 4 percent to 8 percent.

(d) *Evaluation criteria for technical risk factor*.

(1) In determining the appropriate value for the technical risk factor, the contracting officer shall review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Contracting officers shall consider the –

- (i) Technology being applied or developed by the contractor;
- (ii) Technical complexity;
- (iii) Program maturity;
- (iv) Performance specifications and tolerances;
- (v) Delivery schedule; and
- (vi) Extent of a warranty or guarantee.

(2) Above normal conditions indicating substantial technical risk.

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk, such as when –

- (A) The contractor is either developing or applying advanced technologies;
- (B) Items are being manufactured using specifications with stringent tolerance limits;
- (C) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;
- (D) The services or analytical efforts are extremely important to the government and must be performed to exacting standards;
- (E) The contractor's independent development and investment has reduced the Government's risk or cost;
- (F) The contractor has accepted an accelerated delivery schedule to meet the Government's requirements; or
- (G) The contractor has assumed additional risk through warranty provisions.

(ii) The contracting officer may assign a value significantly above normal. A maximum value may be assigned when the effort involves–

- (A) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials;
- (B) Development or initial production of a new item, particularly if performance or quality specifications are tight; or
- (C) A high degree of development or production concurrency.

(3) Below normal conditions indicating lower than normal technical risk.

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low, such as when the –

- (A) Acquisition is for off-the-shelf items;
- (B) Requirements are relatively simple;
- (C) Technology is not complex;
- (D) Efforts do not require highly skilled personnel;
- (E) Efforts are routine; or
- (F) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal. A minimum value may be justified when the effort involves –

- (A) Routine services;
- (B) Production of simple items;
- (C) Rote entry or routine integration of Government-furnished information; or
- (D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management risk factor.*

(1) In determining the appropriate value for the management risk factor, the contracting officer shall review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Contracting officers shall –

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by contract administration offices;

(ii) Assess the management involvement expected on the prospective contract action;  
and

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value added by the contractor.

(2) Above normal conditions indicating substantial management risk.

(i) The contracting officer may assign a higher than normal value when the management effort is intense, such as when –

- (A) The contractor's value added is both considerable and reasonably difficult; or
- (B) The effort involves a high degree of integration and coordination.

(ii) The contracting officer may justify a maximum value when the effort –

- (A) Requires large-scale integration of the most complex nature;
- (B) Involves major international activities with significant management coordination;

or

(C) Has critically important milestones.

(3) Below normal conditions indicating lower than normal management risk.

(i) The contracting officer may assign a lower than normal value when the management effort is minimal, such as when –

- (A) The program is mature and many end item deliveries have been made;
- (B) The contractor adds minimum value to an item;
- (C) The efforts are routine and require minimal supervision;
- (D) The contractor fails to provide an adequate analysis of subcontractor costs; or
- (E) The contractor does not cooperate in the evaluation and negotiation of the

proposal.

(ii) The contracting officer may assign a value significantly below normal. A minimum value may be assigned when –

(A) Reviews performed by the field administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control risk factor.*

(1) In determining the appropriate value for the cost control risk factor, the contracting officer shall –

(i) Evaluate the expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) Evaluate the contractor's cost reduction initiatives (e.g., competition advocacy programs);

(iii) Assess the adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Evaluate any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

(2) Above normal conditions indicating substantial cost control risk.

(i) The contracting officer may assign a value higher than normal value if the contractor can demonstrate a highly effective cost control program, such as when –

(A) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(B) The contractor uses a high degree of subcontract competition; or

(C) The contractor has a proven record of cost tracking and control.

(3) Below normal conditions indicating lower than normal cost control risk.

(i) The contracting officer may assign a lower than normal value in those cases where the contractor demonstrates minimal concern for cost control, such as when –

(A) The contractor's cost estimating system is marginal;

(B) The contractor has made minimal effort to initiate cost reduction programs;

(C) The contractor's cost proposal is inadequate; or

(D) The contractor has a record of cost overruns or the indication of unreliable cost estimates and lack of cost control.

**1815.404-471-3 Contract type risk and working capital adjustment.**

(a) *Risk factors* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It applies to fixed-price type contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment. This adjustment is limited to a maximum of 2 percent.

(b) *Risk factor values and calculations.* A risk value is assigned to calculate the profit or fee objective for contract type. A contract length factor is assigned and applied to costs financed when a working capital adjustment is appropriate. This calculation is only performed when the prospective contract is a fixed-price contract containing provisions for progress payments.

(c) *Values:* Normal and designated ranges.

<b>Contract Type</b>	<b>Notes</b>	<b>Normal Value (Percent)</b>	<b>Designated Range (Percent)</b>
Firm-fixed-price, no financing	(1)	5	4 to 6
Firm-fixed-price with performance-based payments	(6)	4	2.5 to 5.5
Firm-fixed-price with progress payments	(2)	3	2 to 4
Fixed-price-incentive, no financing	(1)	3	2 to 4
Fixed-price-incentive, with performance-based payments	(6)	2	.5 to 3.5
Fixed-price, redeterminable	(3)	--	--
Fixed-price-incentive, with progress payments	(2)	1	0 to 2
Cost-plus-incentive-fee	(4)	1	0 to 2
Cost-plus-award fee	(4)	.75	.5 to 1.5

Cost-plus-fixed fee	(4)	.5	0 to 1
Time-and materials	(5)	.5	0 to 1
Labor-hour	(5)	.5	0 to 1
Firm-fixed-price, level-of-effort, term	(5)	.5	0 to 1

(1) **“No financing,”** means that the contract either does not provide progress or performance based payments, or provides them only on a limited basis. Do not compute a working capital adjustment.

(2) When progress payments are present, compute a working capital adjustment.

(3) For purposes of assigning profit values, treat a fixed-price redeterminable contract as if it were a fixed-price-incentive contract with below normal provisions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. Do not compute the working capital adjustment. However, higher than normal values may be assigned within the designated range to the extent that portions of cost are fixed.

(6) When performance-based payments are used, do not compute a working capital adjustment.

(d) Evaluation criteria.

(1) *General.* The contracting officer shall consider elements that affect contract type risk such as –

- (i) Length of contract;
- (ii) Adequacy of cost projection data;
- (iii) Economic environment;
- (iv) Nature and extent of subcontracted activity;
- (v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);
- (vi) The ceilings and share lines contained in the incentive provisions; and
- (vii) The rate, frequency, and risk to the contractor of performance-based payments, if provided.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Conditions indicating higher than normal contract type risk are –

- (i) Efforts where there is minimal cost history;
- (ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;
- (iii) Incentive provisions that place a high degree of risk on the contractor;
- (iv) Performance-based payments totaling less than the maximum allowable amount(s) specified at [FAR 32.1004\(b\)\(2\)](#); or
- (v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Conditions indicating lower than normal contract type risk are:

- (i) Very mature product line with extensive cost history;

- (ii) Relatively short-term contracts;
- (iii) Contractual provisions that substantially reduce the contractor's risk, e.g. economic price adjustment provisions; and
- (iv) Incentive provisions that place a low amount of risk on the contractor.
- (v) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.*

- (1) Costs financed equal the total costs multiplied by the percent of costs financed by the contractor.
- (2) Total costs may be reduced as appropriate when –
  - (i) The contractor has little cash investment (e.g., subcontractor progress payments are liquidated late in the period of performance);
  - (ii) Some costs are covered by special funding arrangements, such as advance payments;
- (3) The portion financed by the contractor is generally the portion not covered by progress payments. (i.e. – for progress payments: 100 percent minus the customary progress payments rate. For example, if a contractor receives progress payments at 75 percent, the portion financed by the contractor is 25 percent. On contracts that provide progress payments to small business, use the customary progress payment rate for large businesses.)

(f) *Contract length factor.*

- (1) This is the period of time that the contractor has a working capital investment in the contract. It –
  - (i) Is based on the time necessary for the contractor to complete the substantive portion of the work;
  - (ii) Is not necessarily the period of time between contract award and final delivery, as periods of minimal effort should be excluded;
  - (iii) Should not include periods of performance contained in option provisions when calculating the objective for the base period; and
  - (iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial year's requirements.
- (2) The contracting officer –
  - (i) Should use the following to select the contract length factor:

Period to perform substantive portion (in months)	Contract length factor
21 or less ...	.40
22 to 27 ...	.65
28 to 33 ...	.90
34 to 39 ...	1.15
40 or more ...	1.40

- (ii) Should develop a weighted average contract length when the contract has multiple deliveries; and
- (iii) May use sampling techniques provided they produce a representative result.
- (3) *Example:* A prospective contract has a performance period of 40 months with end items being delivered in the 34<sup>th</sup>, 36<sup>th</sup>, 38<sup>th</sup> and 40<sup>th</sup> months of the contract. The average period is 37 months and the contract length factor is 1.15.

#### **1815.404-471-4 Other considerations.**

- (a) Other Considerations may be included by the contracting officer to account for special circumstances, such as contractor efficiencies or unusual acceptance of contractual or program risks that are not adequately addressed in the structured approach calculations described in

1815.404-471-2 or 1815.404-471-3. The total adjustment resulting from Other Considerations may be positive or negative but in no case should the total adjustment exceed  $\pm 5$  percent.

(b) The contracting officer shall analyze and verify information provided by the contractor that demonstrates that the special circumstances being recognized under this section –

(1) Provide substantial benefits to the Government under the contract and/or overall program;

(2) Have not been recognized in the structured approach calculations; and

(3) Represent unusual and innovative actions or acceptance of risk by the contractor.

(c) Examples of special circumstances include, but are not limited to the following:

(1) Consistent demonstration by the contractor of excellent past performance within the last three years, with a special emphasis on excellence in safety, may merit an upward adjustment of as much as 1 percent. Similarly, an assessment of poor past performance, especially in the area of safety, may merit a downward adjustment of as much as -1 percent. This consideration is especially important when negotiating modifications or changes to an ongoing contract.

(2) Extraordinary steps to achieve the Government's socio-economic goals, environmental goals, and public policy goals established by law or regulation that are sufficiently unique or unusual may merit an upward adjustment of as much as .5 percent. Similarly, for non-participation in or violation of Federal programs, the contracting officer may adjust the objective by as much as -.5 percent. However, this consideration does not apply to the utilization of small disadvantaged businesses. Incentives for use of these firms may only be structured according to [FAR 19.1203](#) and [19.1204\(c\)](#).

(3) Consideration of up to 1 percent should be given when contract performance requires the expenditure of significant corporate capital resources.

(4) Unusual requests for use of government facilities and property may merit a downward adjustment of as much as - 1 percent.

(5) Cost efficiencies arising from innovative product design, process improvements, or integration of a life cycle cost approach for the design and development of systems that minimize maintenance and operations costs, that have not been recognized in Performance Risk or Contract Type Risk, may merit an upward adjustment. This factor is intended to recognize and reward improvements resulting from better ideas and management that will benefit the Government in the contract and/or program.

(d) Other considerations need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when there is a significant expectation of near-term spin-off benefits as a direct result of the contract.

#### **1815.404-471-6 Modification to structured profit/fee approach for nonprofit organizations.**

(a) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach must be used as a basis for arriving at profit/fee objectives for nonprofit organizations ([FAR Subpart 31.7](#)), excluding educational institutions ([FAR Subpart 31.3](#)), in accordance with paragraph (b) of this section. It is NASA policy not to pay profit or fee on contracts with educational institutions.

(b) For contracts with nonprofit organizations under which profit or fee is involved, an adjustment of up to 3 percent of the costs in Block 13 of NASA Form 634 must be subtracted from the total profit/fee objective. In developing this adjustment, it is necessary to consider the following factors:

(1) Tax position benefits;

(2) Granting of financing through letters of credit;

(3) Facility requirements of the nonprofit organization; and

(4) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

#### **1815.404-472 Payment of profit or fee under letter contracts.**

NASA's policy is to pay profit or fee only on definitized contracts.

#### **1815.406 Documentation.**

##### **1815.406-1 Prenegotiation objectives.**

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under the competitive negotiated procedures of [FAR 15.3](#) and 1815.3.

##### **1815.406-170 Content of the prenegotiation position memorandum.**

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see [FAR 15.406-3](#) and 1815.406-3). In addition to the information described in [FAR 15.406-1](#) and, as appropriate, 15.406-3(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) *Introduction.* Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOC, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.406-3(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability.

(c) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition, including such items as --

- (1) Letter contract or precontract costs authorized and incurred;
- (2) Results of preaward survey;
- (3) Contract option requirements;
- (4) Government property to be furnished;
- (5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government);
- (6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required; and
- (7) Any risk management issues, e.g., mission success, safety, occupational health, information technology, export control, security, and environmental risks.

(d) *Cost analysis.* For the basic requirement, and any option, include--

(1) A parallel tabulation, by element of cost and profit/fee, of the contractor's proposal and the Government's negotiation objective. The negotiation objective represents the fair and reasonable price the Government is willing to pay for the supplies/services. For each element of cost, compare the contractor's proposal and the Government position, explain the differences and how the Government position was developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.



(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained. For each proposed subcontract meeting the requirement of [FAR 15.404-3\(c\)](#), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, any unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach--Profit/Fee Objective, and DD Form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, and cost risk.

(e) *Negotiation approval sought.* The PPM represents the Government's realistic assessment of the fair and reasonable price for the supplies and services to be acquired. If negotiations subsequently demonstrate that a higher dollar amount (or significant term or condition) is reasonable, the contracting officer shall document the rationale for such a change and request approval to amend the PPM from the original approval authority.

#### **1815.406-171 Installation reviews.**

Each contracting activity shall establish procedures to review all prenegotiation position memoranda. The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

#### **1815.406-172 Headquarters reviews.**

(a) When a prenegotiation position has been selected for Headquarters review and approval, the contracting activity shall submit to the Office of Procurement (Code HS) one copy each of the prenegotiation position memorandum, the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(b) The required information described in paragraph (a) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review. Electronic submittal is acceptable.

#### **1815.406-3 Documenting the negotiation.**

(a)(i) The price negotiation memorandum (PNM) serves as a detailed summary of: the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated; and the methodology and rationale used in arriving at the final negotiated agreement.

(ii) A PNM is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.406-3 shall be reflected in the evaluation and selection documentation to the extent applicable.

(iii) When the PNM is a "stand-alone" document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.406-1, the subsequent PNM need only provide any information required by [FAR 15.406-3](#) that was not provided in the PPM, as well as any changes in the status of factors affecting cost

elements (e.g., use of different rates, hours, or subcontractors; wage rate determinations; or the current status of the contractor's systems).

(b) When field pricing assistance has been obtained from the Defense Contract Audit Agency, the contracting officer shall send a copy of the PNM documentation to the audit office that provided the assistance.

#### **1815.407 Special cost or pricing areas.**

##### **1815.407-2 Make-or-buy programs.**

(e)(1) Make-or-buy programs should not include items or work efforts estimated to cost less than \$500,000.

#### **1815.408 Solicitation provisions and contract clauses.**

##### **1815.408-70 NASA solicitation provisions and contract clauses.**

(a) The contracting officer shall insert the provision at [1852.215-78](#), Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in [FAR 15.407-2\(c\)](#). This provision shall be used in conjunction with the clause at [FAR 52.215-9](#), Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215-79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215-9 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

#### **Subpart 1815.5--Preaward, Award, and Postaward Notifications, Protests, and Mistakes**

##### **1815.504 Award to successful offeror.**

The reference to notice of award in [FAR 15.504](#) on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures for approval and issuance of letter contracts shall be followed.

##### **1815.506 Postaward debriefing of offerors.**

##### **1815.506-70 Debriefing of offerors - Major System acquisitions.**

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in [Part 1834](#) and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Assistant Administrator for Procurement (Code HS).

#### **Subpart 1815.6--Unsolicited Proposals**

##### **1815.602 Policy.**

(1) An unsolicited proposal may result in the award of a contract, grant, cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook ([NPR 5800.1](#)) applies.

(2) Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

#### **1815.604 Agency points of contact.**

(a)(6) Information titled "Guidance for the Preparation and Submission of Unsolicited Proposals" is available on the Internet at [http://prod.nais.nasa.gov/pub/pub\\_library/unSol-Prop.html](http://prod.nais.nasa.gov/pub/pub_library/unSol-Prop.html). A deviation is required for use of any modified or summarized version of the Internet information or for alternate means of general dissemination of unsolicited proposal information.

#### **1815.606 Agency procedures.**

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

(b)(i) NASA Headquarters and each NASA field installation shall designate a point of contact for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the point of contact to the proper installation. Points of contact are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Points of contact shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

#### **1815.606-70 Relationship of unsolicited proposals to NRAs.**

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see [1835.016-71](#)), provided that the evaluating office can either:

- (a) State that the proposal is not at a competitive disadvantage, or
- (b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

#### **1815.609 Limited use of data.**

#### **1815.609-70 Limited use of proposals.**

Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in, 1815.207-70.

#### **1815.670 Foreign proposals.**

Unsolicited proposals from foreign sources are subject to [NPD 1360.2](#), Initiation and Development of International Cooperation in Space and Aeronautics Programs.

### **Subpart 1815.70--Ombudsman**

**1815.7001 NASA Ombudsman Program.**

NASA's implementation of an ombudsman program is in [NPR 5101.33](#), Procurement Advocacy Programs.

**1815.7002 Synopses of solicitations and contracts.**

In all synopses announcing competitive acquisitions, the contracting officer shall indicate that the clause at [1852.215-84](#), Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

**1815.7003 Contract clause.**

The contracting officer shall insert a clause substantially the same as the one at 1852.215-84, Ombudsman, in all solicitations (including draft solicitations) and contracts. Use the clause with its Alternate I when a task or delivery order contract is contemplated.